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INDIGENOUS ISSUES

Report of the second workshop on a permanent forum for indigenous people within the United Nations system held in accordance with Commission on Human Rights resolution 1997/30

(Santiago, 30 June - 2 July 1997)

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* The annexes are contained in addendum 1 to the present report.

Introduction

1. In accordance with Commission on Human Rights resolution 1997/30 of 11 April 1997, the second workshop on a permanent forum for indigenous people within the United Nations system was held in Santiago from 30 June to 2 July 1997. As requested in the resolution, the High Commissioner/Centre for Human Rights invited representatives of Governments, organizations of indigenous people, non-governmental organizations, United Nations organizations and bodies and the specialized agencies to participate in the workshop.

I. ORGANIZATION OF THE WORKSHOP

A. Attendance

2. The following States were represented: Argentina, Australia, Botswana, Brazil, Canada, Chile, China, Colombia, Denmark (Greenland Home Rule), Finland, Guatemala, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, Panama, Peru, Philippines, South Africa, Spain, Sweden, United States of America, Uruguay.

3. The following United Nations bodies were represented: Economic Commission for Latin America and the Caribbean, United Nations Children's Fund, United Nations Development Programme, Secretariat to the Convention on Biological Diversity of the United Nations Environment Programme, Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

4. The following specialized agencies were represented: Food and Agriculture Organization of the United Nations, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization.

5. The following organizations of indigenous people were represented: Aboriginal and Torres Strait Islander Commission, Aidesep-Peru, Alianza Mundial de los Bosques Tropicales, Asociación Indígena de la República Argentina, Asociación Indígena Kespikala Mamiña-Iquique, Centro de Estudios para el Estudiante y la Educación Mapuche, Centro Pehuenche Alto Bio Bio, Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos, Comisión Jurídica de los Pueblos de Integración Tawantinsuyana, Comunidad Carahue, Comunidad Mapuche Xeg Xeg, Confederación de Nacionalidades Amazónicas del Perú, Consejo de Todas las Tierras, Consejo Inter-Regional Mapuche, Coordinadora de Organizaciones e Instituciones Mapuche, Coordinadora Mapuche de la Región Metropolitana, Federación Aymar Markas Provincia Iquique, Grand Council of the Crees, Indian Law Resource Center, Indigenous Woman Aboriginal Corporation, International Indian Treaty Council, International Organization of Indigenous Resources Development, Inuit Circumpolar Conference, Mapuche International Link, Nacional Mapuche Ad-Mapu, National Aboriginal & Torres Strait Islander Legal Services Secretariat, Organización Comunal Loncoche, Parlamento Aymara, Pastoral Indígena de Santiago, Saami Council, Tebtebba Foundation Philippines.

6. The following non-governmental organizations in consultative status with the Economic and Social Council were represented: Commission of the Churches on International Affairs of the World Council of Churches, International Federation of Human Rights Leagues, International Work Group for Indigenous Affairs.

B. Documentation

7. The following documents were made available to the workshop:

Agenda (HR/STGO/SEM/1997/1/Rev.1);

Declaration and report of the First International Indigenous Conference on a Permanent Forum in the United Nations system, Temuco, Chile, 6-9 May 1997 (HR/STGO/SEM/1997/CRP.1);

Written statement by the Grand Council of the Crees (HR/STGO/SEM/1997/CRP.2);

Written statement by the Saami Council (HR/STGO/SEM/1997/CRP.3);

Working paper submitted by the Government of Denmark (HR/STGO/SEM/1997/CRP.4);

Provisional and final list of participants (HR/STGO/SEM/1997/Misc.1 and INF.1);

Commission on Human Rights resolution 1997/30 on a permanent forum for indigenous people in the United Nations system;

Review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people: report of the Secretary-General (A/51/493);

Report of the first workshop on a permanent forum for indigenous people within the United Nations (E/CN.4/Sub.2/AC.4/1995/7).

C. Election of Officers

8. The meeting was opened by Ms. Miriam Krawczyk of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC). A representative of the United Nations High Commissioner/Centre for Human Rights welcomed the participants, thanked the Government of Chile for hosting the workshop and ECLAC for its assistance, and provided background information relating to the meeting. Participants invited Mr. Cristian Maquieira (Chile) and Mr. Kuupik Kleist (Denmark/Greenland) to be the Chairperson and Rapporteur, respectively.

D. Agenda

9. The following agenda was adopted:

1. General debate on the Secretary-General's review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people (A/51/493).

2. Main questions relating to the establishment of a permanent forum for indigenous people:

(a) The United Nations body to which the proposed forum would report;

(b) Mandate and terms of reference;

(c) Activities that might be undertaken by the forum;

(d) Membership;

(e) Participation of indigenous people;

(f) Financial and secretariat implications;

(g) Other matters.

3. Report to be submitted to the Commission on Human Rights and transmitted to the fifteenth session of the Working Group on Indigenous Populations.

II. GENERAL DEBATE ON THE SECRETARY-GENERAL'S REVIEW OF THE EXISTING MECHANISMS, PROCEDURES AND PROGRAMMES WITHIN THE UNITED NATIONS CONCERNING INDIGENOUS PEOPLE

10. Some participants expressed the desire to use the term "indigenous peoples" as opposed to "indigenous people". Other participants noted that reference to "indigenous peoples" was inappropriate in an international environment because the term "peoples" suggested a right of self-determination and sovereignty over natural resources. This report reflects the debate and does not imply acceptance of the usage of either expression. In this report both are used without prejudice to the positions of particular delegations, where divergences of approach remain.

11. The Secretary-General's review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people (A/51/493) was introduced by the representative of the United Nations High Commissioner/Centre for Human Rights. Participants expressed a range of views about the review and the permanent forum in general. While many participants stated that there was no need for a definition of "indigenous people", one government representative considered that there was a need for a clear definition. Some State representatives noted that their Governments had not yet taken a definitive position on many issues being discussed at the workshop, including the question of the establishment of a permanent forum.

However, they agreed to offer comments in an effort to contribute constructively to the discussions. Participants prefaced their opening remarks by expressions of appreciation to the Government of Chile for hosting the second workshop.

12. All speakers welcomed the Secretary-General's review and expressed the view that the report established an important point of reference for the deliberations of the meeting. Participants also expressed satisfaction with the fact that the review was carried out in close consultation with Governments, United Nations bodies and indigenous peoples and organizations.

13. Many participants concurred with the conclusions contained in the Secretary-General's report, in which it is stated that there are virtually no mechanisms within the United Nations system which give indigenous peoples an opportunity to take part in decision-making. Furthermore, many participants stated that adequate procedures, ensuring the full and effective involvement of indigenous peoples in the planning, implementation and evaluation of processes affecting them, did not exist within the United Nations system. In that context it was noted that, as well as giving high priority to considering the establishment of a permanent forum, existing bodies and mechanisms needed to be improved. One participant also noted that Agenda 21 adopted by United Nations Conference on Environment and Development, required the establishment of indigenous focal points within each organization and annual inter-agency coordination meetings in consultation with Governments and indigenous organizations. Also, the Working Group on Indigenous Populations was encouraged to continue its dialogue with Governments, United Nations bodies and indigenous peoples in as broad a manner as possible.

14. It was pointed out by one participant that United Nations organizations and bodies were separate entities with their own governing bodies and that ultimately it was up to the States members of the governing bodies to ensure that indigenous views were incorporated in the work of the organizations concerned.

15. Participants referred to the Secretary-General's comments regarding measures to avoid duplication and strengthen cooperation and consistency of approach and to ensure cost-effectiveness in the programmes of the United Nations concerning indigenous people. Some participants considered that a permanent forum for indigenous people would contribute to better coordination and the achievement of those objectives. In that context it was also noted that the relationship of a permanent forum to existing United Nations structures and mandates should be examined.

16. Participants referred to the ongoing process of reform of the United Nations system, and said that this process of reform should be taken into consideration when discussing the establishment of a permanent forum for indigenous people. Many participants stated that there existed an urgent need to establish the permanent forum. Some participants said that the reform process could be viewed as providing an opportunity to advance the establishment of a permanent forum. Other participants said that the permanent forum was part of the reform process, and that it would add value to the United Nations system.

17. The Chairperson-Rapporteur of the Working Group on Indigenous Populations pointed out that a permanent forum was more necessary than ever in the light of the growing number of United Nations standard-setting and operational activities. She underlined that coordination, transparency and oversight were urgently needed, not only for reasons of efficiency and accountability but also because indigenous people themselves were in certain cases becoming overwhelmed with meetings and information and were losing their capacity to participate fully and meaningfully in all of the international decisions which affected them. She also stated that the United Nations reform process offered an immediate opportunity to establish an effective mechanism for indigenous peoples' participation in the United Nations.

III. MAIN QUESTIONS RELATING TO THE ESTABLISHMENT OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE

18. It was agreed to divide the consideration of questions under agenda item 2 into the following four clusters: (a) Mandate and terms of reference, and activities that might be undertaken by the forum; (b) Membership and participation of indigenous people; (c) United Nations body to which the proposed forum would report and financial and secretariat implications; and (d) Other matters.

A. Mandate and terms of reference and activities that might be undertaken by the forum

19. One government delegation submitted an outline of a permanent forum for indigenous people (annex I). The outline addresses in concrete terms the mandate, membership, procedure, financing, name, placement within the United Nations system and creation of such a forum. Furthermore, two indigenous peoples' organizations submitted written statements addressing the above-mentioned issues (annexes II and III). Moreover, the Declaration of the First International Conference on a Permanent Forum in the United Nations System was also submitted to the meeting (annex IV). It was agreed that the four documents, together with the statement of the Chairperson-Rapporteur of the Working Group on Indigenous Populations (annex V), should be annexed to the report of the workshop.

20. Some participants expressed the view that there was a link between the mandate of the permanent forum and its level within the United Nations system, and that its placement within the system to a large extent would be determined by its mandate.

21. Participants expressed the view that the mandate of the forum should be sufficiently broad to cover all issues affecting indigenous peoples, and that its activities should be of such a character and be carried out in a manner which corresponded to the needs of Governments and of indigenous peoples. The mandate of the permanent forum should go beyond dealing with human rights; the permanent forum should act as an interface between Governments, indigenous peoples and the United Nations system. The mandate should cover areas such as cultural, civil, political, social, economic and human rights, health, development, education and the environment. The future permanent forum could contribute to the resolution of conflicts, oversee and coordinate United Nations activities relating to indigenous peoples, mobilize expertise

on indigenous issues, carry out impact assessments of United Nations activities and policies relating to indigenous peoples, disseminate information on the conditions and the needs of indigenous peoples and on the implementation and realization of international standards relating to indigenous peoples' human rights, as well as hear complaints. The mandate of the permanent forum should not duplicate that of existing United Nations bodies or mechanisms.

22. Participants referred to the Charter of the United Nations, and said that its provisions could provide guidelines with regard to the mandate of the forum. In this context, it was noted that Article 62 of the Charter states that the Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned. Moreover, it may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. The permanent forum would be valuable for the Council in its dealing with issues related to indigenous peoples.

23. Some participants expressed the view that it was necessary to establish a legal framework for the forum and its mandate. The draft United Nations declaration on the rights of indigenous peoples, once adopted, would constitute an adequate legal basis for the activities of the permanent forum. Other participants stated that since many indigenous rights are already included in various international instruments, the permanent forum could start its work on the basis of those instruments.

24. The permanent forum could assist in the follow-up to the programmes of action adopted at high-level conferences as well as other decisions and resolutions on indigenous issues adopted by the United Nations, monitor United Nations activities, play a role in the programmes and projects of the United Nations system and contribute to the well-being of indigenous peoples.

B. Membership and participation of indigenous people

25. Participants considered that the principle of full participation of indigenous peoples in the permanent forum was fundamental to the success of the forum. Participants identified two categories of participation: (a) participation as member with the right to vote; and (b) participation as observer. It was crucial for the legitimacy and credibility of the forum that the forum be composed of an equal number of governmental and indigenous representatives. Some participants said that indigenous peoples should determine their membership in the forum and that direct indigenous representation should be determinant in this regard. However, one governmental delegation stated it could not support a forum within the United Nations system where indigenous peoples were granted the same legal status as Member States. Another government representative said that there was no precedent for membership in United Nations bodies beyond the membership of Governments and independent experts. Many participants urged that a forward-looking approach be taken to the questions of indigenous peoples' participation and representation in the permanent forum in the framework of

the principle of equality. One indigenous organization stated that its preference was to be recognized as a "nation" by the United Nations General Assembly.

26. Several delegations expressed the view that the composition of the permanent forum should be mixed, i.e. made up of States and legitimate indigenous authorities acknowledged by the indigenous peoples and autonomously elected by all States members of the forum. The same delegations referred to the arrangements for participation and membership of the Development Fund for the Indigenous Peoples of Latin America and the Caribbean. Other participants stressed that indigenous representatives should be nominated by indigenous peoples themselves. Several participants said that the forum should have between 15 and 25 members.

27. Some participants referred to the open participation of indigenous peoples in the United Nations Working Group on Indigenous Populations and suggested that the permanent forum should adopt rules and procedures which enabled it, when it so desired, to apply the same flexibility. One participant said that the rules and procedures of the permanent forum should provide for maximum opportunities for indigenous participation.

28. Some participants said that the right to vote in the forum should not be overemphasized because the forum should try to adopt recommendations and decisions by consensus, although all members of the forum should have the right to vote.

29. Participants said that United Nations agencies, non-governmental organizations and independent experts should participate in the work of the forum, although some delegations expressed the view that they should only be observers. Several participants expressed their opposition to the notion of "independent experts" on indigenous affairs as indigenous peoples were capable of representing themselves as experts on their own status, conditions and affairs.

30. The importance of the forum striking the right balance between legitimacy and effectiveness was identified as a vital element. Many participants referred to the need to respect the decision-making of indigenous peoples with regard to the selection, appointment or election of their representatives through their political institutions. Several participants proposed that in order to ensure an efficient and well-functioning permanent forum an automatic review should be undertaken with regard to its size and mandate after a certain period of time.

C. United Nations body to which the proposed forum would report and financial and secretariat implications

31. Many participants considered that the permanent forum should be established at the highest level in the United Nations system, and most appropriately under the Economic and Social Council. Some participants said that the permanent forum should be a functional commission of ECOSOC. Others stated that it should be advisory in its character. Some participants said that the forum could be established as an advisory body to the General Assembly. One participant said that the forum should be linked to the

Trusteeship Council, while another delegation proposed that the permanent forum could submit its reports to the Commission on Human Rights. Finally, some participants suggested that the permanent forum should be established as a separate body directly under the Secretary-General. Some participants recommended that in response to the review of the Secretary-General, a post of indigenous adviser should be established immediately within the Office of the Secretary-General, in order to strengthen indigenous issues within the United Nations.

32. Many participants suggested that the forum should be funded from the United Nations regular budget, although some considered that voluntary contributions could be used to finance supplementary activities of the forum.

33. Some participants expressed their concern about the establishment of a permanent forum in the light of the financial constraints faced by the United Nations. Other participants stated that the financial difficulties of the United Nations should not be seen as an obstacle to the establishment of the permanent forum. Some participants considered that it was essential that any discussion of the possible establishment of a permanent forum be realistic in terms of resources and take into account the ongoing fundamental reform of the United Nations. Any proposal in that regard must be examined in light of (a) the availability of voluntary funding; (b) a shrinking United Nations budget which left no room for net growth in the organization; and (c) the imperative to avoid duplication and to direct scarce resources to activities having the greatest impact and benefits.

D. Other matters

34. Many participants suggested that the Commission on Human Rights at its fifty-fourth session should consider how to further the process of the establishment of a permanent forum for indigenous people within the United Nations system, inter alia through the drafting of concrete proposals to this effect and bearing in mind the possibility of submitting the matter to ECOSOC for action.

35. The workshop noted with appreciation the progress achieved so far in the Copenhagen and Santiago workshops. Participants agreed that the report of the latter should be sent to Governments, the United Nations system and organizations of indigenous people in accordance with Commission on Human Rights resolution 1997/30. Participants urged all interested parties to further the process of the establishment of the permanent forum by commenting on the report and making concrete proposals in order to contribute to the consideration of this matter at the fifty-fourth session of the Commission on Human Rights.

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(Santiago, 30 June - 2 July 1997)

Addendum

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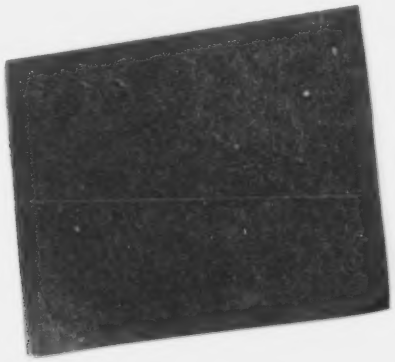

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Annexes

I. OUTLINE OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE WORKING PAPER PRESENTED BY THE GOVERNMENT OF DENMARK

Name: The Permanent Forum on Indigenous Peoples' Affairs

(Commentary: It goes without saying that the organ could have many different names. However the term "forum" has been used whenever discussed since the recommendation on the proclamation of an international decade of the world's indigenous people, made at the World Conference on Human Rights in Vienna in 1993. The Vienna Declaration and Programme of Action states that "the establishment of a permanent forum for indigenous people in the United Nations system should be considered". The term is well known both by Governments and by indigenous representatives and therefore seems appropriate.)

Mandate: All issues affecting indigenous peoples; coordination within the United Nations system of activities related to indigenous peoples; guidance and advice to States, specialized agencies and other relevant parties; dissemination of information on the conditions and needs of indigenous peoples; promotion of understanding among peoples with a view to facilitating peaceful solutions to disputes; formulation of recommendations on any issue affecting indigenous peoples.

(Commentary: The forum should be able to take up all issues affecting indigenous peoples. It is important to ensure that a permanent forum has a broad mandate and that the full range of activities of the forum is not limited to social and economic questions in the narrow sense, but to the full range of activities within ECOSOC.)

Placement within the United Nations system: Subsidiary organ of the Economic and Social Council (ECOSOC)

(Commentary: In the review presented by the Secretary-General at the fifty-first session of the General Assembly on existing mechanisms, procedures and programmes within the United Nations concerning indigenous peoples, it is stated that there are virtually no mechanisms within the United Nations organizations which give the nominated representatives of indigenous organizations or peoples an opportunity to provide expert advice or take part in decision-making. ECOSOC is the principal organ for supervising the economic and social activities of the United Nations system concerning human rights, the environment, development, health, cultural issues and other areas. As the indigenous peoples' situation covers human rights as well as social, economic, cultural and environmental affairs, it seems appropriate to place this organ directly under ECOSOC).

Location: United Nations Headquarters in New York.

(Commentary: It is important that the forum physically is placed near the ECOSOC secretariat, which is situated in New York. This location will facilitate communication and participation in United Nations matters affecting indigenous peoples.)

Membership: Fifteen members appointed by ECOSOC consisting of five government representatives (one from each regional group), five representatives of indigenous peoples (one from each of the regions: Circumpolar, North America, South America, Africa, Asian-Pacific), three representatives from the specialized agencies and two individual experts on indigenous affairs.

Other States, other United Nations bodies, intergovernmental organizations, non-governmental organizations recognized by ECOSOC and recognized indigenous organizations may attend meetings of the permanent forum as observers.

(Commentary: Members should be appointed by ECOSOC on the basis of consensus. Governments and indigenous peoples' representatives should be nominated by their respective regional group:, specialized agencies and individual experts should be nominated by the Secretary-General. Time-consuming election campaigns should be avoided. The number of 15 members seems appropriate).

Period of membership: Three years with the possibility of reappointment for an additional term.

(Commentary: Three years would seem to strike a reasonable balance between the need for continuity and the need for rotation.)

Procedure: A session of at least one week twice a year, reporting to ECOSOC.

The permanent forum shall adopt its own rules of procedure including the method of selecting its officers.

As a general rule decisions and recommendations on substantive matters, as opposed to procedural matters, shall be made by consensus.

(Commentary: The issues of the forum are clearly related to ECOSOC, therefore the forum should report to ECOSOC. The composition of the forum lends itself to a consensus-building procedure.)

Finance: United Nations regular budget.

(Commentary: To secure a financial basis.)

II. A CONCISE INDIGENOUS PERSPECTIVE SUBMITTED BY THE GRAND COUNCIL OF THE CREES

1. The idea for the establishment of a permanent forum at the United Nations for indigenous peoples received its formal statement in the Vienna Declaration and Programme of Action of the World Conference on Human Rights which called for consideration of the "establishment of a permanent forum for indigenous people in the United Nations system" within the framework of the International Decade of the World's Indigenous People.

2. The recognition of the need for a permanent forum was the culmination of observations by indigenous leaders and organizations as well as United Nations officials and international experts who recognized that the world's indigenous peoples did not have adequate or appropriate access to the United Nations system.

3. In particular it was noted that at present the United Nations is concerned exclusively with discrimination against indigenous peoples, and that the only forum specifically mandated to carry out this work is the Working Group on Indigenous Populations (WGIP) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

4. The WGIP, made up of five experts, is not mandated to hear grievances or complaints and is limited exclusively to considerations within specified fields of the sphere of human rights.

5. The Commission on Human Rights has recently added an item to its agenda entitled "Indigenous issues". The International Labour Organization has approved Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries. And we are now in the third year of the International Decade.

6. While these and other developments attest to the growing recognition of the importance of indigenous issues within the United Nations system, they are, in the light of intensified demand, wholly insufficient to serve the needs of the world's indigenous peoples.

7. The Copenhagen workshop on a permanent forum for indigenous people (June 1995) recommended that the United Nations undertake a review of existing mechanisms, procedures and programmes within the United Nations concerning indigenous peoples. This recommendation was taken up by the General Assembly in its resolution 50/157 of 21 December 1995 in which the Assembly recommended that the Secretary-General undertake such a review.

8. It was the expressed view of the Grand Council of the Crees at Copenhagen and elsewhere that such a review would demonstrate that the United Nations does not serve the needs or interests of the world's indigenous peoples, and that the creation of a permanent forum for indigenous peoples at the United Nations would be the ideal mechanism to address this conspicuous failing.

9. The Secretary-General's review is now complete and is available to this meeting. It demonstrates:

(a) The very limited scope of United Nations activity with regard to indigenous peoples;

(b) The serious exclusion of the consideration of indigenous peoples' interests and considerations from, inter alia, economic development banking, international aid, peacekeeping, trade, intellectual and cultural property, policing, international law, intergovernmental agreements and treaties, and scientific research and exploration;

(c) The failure of the States Members of the United Nations and the administration of the United Nations system to assure indigenous representation as diplomatic representatives, as members of appointed commissions, committees, tribunals and other bodies, and as United Nations staff at all levels;

(d) The real inadequacy of the United Nations in addressing practically and effectively well-documented violations of the human rights of indigenous peoples which take the form of abuses against, inter alia, their right to life, land rights, treaty rights, right to self-determination, right to benefit from natural resources, right to subsistence, right to environmental protection and the right to development;

(e) The inadequacy of the United Nations in carrying out its own largely ceremonial programmes in regard to indigenous peoples such as the International Year and the International Decade, the commitment to consult with indigenous peoples on issues of mutual concern, and to include indigenous issues, where relevant, in the agenda of United Nations meetings.

10. The Secretary-General's report demonstrates to what extent it was necessary to search in order to find examples of progress and activity on indigenous issues, and just how limited and tenuous this field is within the work of the United Nations system.

11. A permanent forum within the United Nations system should be functionally conceived to address the multitude of issues brought forward by the WGIP, the various United Nations seminars on indigenous issues, and the international conferences on human rights, the environment, social and cultural rights, housing, women's and children's rights, and food security.

12. The forum should allow for direct representation of indigenous peoples, nations and communities, and should provide an "interface" between communities, States and United Nations agencies.

13. The forum should provide formal mechanisms for the lodging of grievances and complaints and have the mandate to bring urgent matters to the immediate attention of the relevant United Nations bodies.

14. The forum should also be able to act in an advisory capacity to the Secretary-General and relevant bodies and agencies within the United Nations system on matters where the expertise of indigenous peoples will contribute to the objectives of the United Nations in keeping with the Charter.

15. The preferred option of the Grand Council of the Crees is that the permanent forum for indigenous peoples be established at the Council level of the United Nations, perhaps in place of the now largely redundant Trusteeship Council, as suggested by Mr. Noel Brown.

16. The Grand Council of the Crees would also endorse the recommendation of the Aboriginal and Torres Strait Islander Commission to establish the forum as a functional commission of ECOSOC. However, we would have difficulty recommending that it be established at the Sub-Commission level because of the very limited scope and mandate that would be imposed by any parent commission.

17. The Grand Council of the Crees takes special note of the need to continue the mandate of the WGIP in the field of human rights, and that the consideration of a permanent forum for indigenous peoples should not affect the mandate of the WGIP.

18. The Grand Council of the Crees rejects as prejudicial to the stated objectives and priorities of the United Nations any objections to the establishment of a permanent forum for indigenous peoples that are premised on financial considerations, as we believe that the United Nations is fully capable of reorganizing its administration within existing constraints to meet this need within the Decade.

III. STATEMENT SUBMITTED BY THE SAAMI COUNCIL

A. The Secretary-General's review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous people

1. In its resolution 50/157 of 21 December 1995, the General Assembly recommended that the Secretary-General undertake a review of existing mechanisms, procedures and programmes within the United Nations concerning indigenous peoples. The underlying aim of this exercise was to examine whether we need a high-level United Nations forum for indigenous issues, or if existing United Nations mechanisms, procedures and programmes adequately address such issues.

2. The Saami Council welcomes the review of the Secretary-General contained in document A/51/493. We note with great satisfaction that the review was carried out in close consultation with not only Governments and United Nations agencies, but also indigenous peoples and indigenous organizations. The report provides a thorough and detailed analysis of the existing United Nations system and how the system deals with indigenous issues. It indicates that there is a great difference in the level and extent of indigenous-related activities among United Nations agencies and programmes.

3. The Secretary-General rightly states that there exists no mechanisms to ensure regular exchange of information and views between the concerned and interested parties - Governments, the United Nations system and indigenous peoples - on an ongoing basis. Moreover, there is only a minimum of cooperation between agencies on issues relevant to indigenous peoples. In fact, the report clarifies that only a few United Nations agencies focus on indigenous issues at all, e.g., ILO, UNESCO, WHO and the United Nations Centre for Human Rights. The Secretary-General's report also highlights the fact that there are no or few adequate procedures in place to accommodate the effective involvement and participation of indigenous peoples in the work of the United Nations and its agencies.

4. It is thus very clear to us that the existing United Nations system does not fulfil its obligations towards indigenous peoples and that it does not provide the necessary space for dialogue between Governments, United Nations agencies and indigenous peoples. Consequently, there is an urgent need for a United Nations forum for indigenous issues competent to deal with issues of concern to indigenous peoples in a way which respects the often interrelated and inseparable nature of indigenous issues. Thus, the Saami Council cannot see how the United Nations can fulfil its obligations towards indigenous peoples without establishing a political forum, with a mandate that embraces the full range of issues of concern to indigenous peoples as well as coordination of all United Nations activities relevant to the concerns of indigenous peoples. If we may so note, this has been our position for many years, and we are very happy to see that the Secretary-General is of the same opinion.

B. Definition of "indigenous peoples"

5. Some Governments - and happily they are very few - argue that a clear definition of the term "indigenous peoples" is required before a meaningful discussion about the establishment of a permanent forum can take place. They talk about "true" and "false" indigenous peoples, and say that Governments should retain the exclusive right to designate and judge who the "true" indigenous peoples are.

6. The Saami Council does not agree with this position. A definition cannot be a pre-requisite to the establishment of the permanent forum, because we do not see any reason why we indigenous peoples, among all peoples, alone need to be defined.

7. Most countries currently seeking to address indigenous issues tend to view definition within the context of their respective national constitutional and historical framework rather than as an issue of universal character. There is no general universal agreement on the definition of indigenous peoples. However, there are several working definitions and descriptions of indigenous peoples at the international level, such as in ILO Convention No. 169, the United Nations Study of the problem of discrimination against indigenous populations (the Martínez Cobo report), and the World Bank's Operational Directive on Indigenous Peoples. Even without a general universal definition it should be relatively easy to identify the indigenous peoples by using these criteria, which are adequate to determine whether a person or community is indigenous or not. Factors such as historical continuity, self-identification and group membership are cardinal criteria in this regard.

8. The Martínez Cobo report contains the following working definition of indigenous peoples:

> "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identify, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems" (para. 379).

9. Furthermore, the Special Rapporteur expresses the view that such a historical continuity "may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors: (a) occupation of ancestral lands, or at least of part of them; (b) common ancestry with the original occupants of these lands; (c) culture in general, or in specific manifestations ...; (d) language ...; (e) residence in certain parts of the country, or in certain regions of the world; (f) other relevant factors" (para. 380).

10. The Special Rapporteur also includes self-identification as indigenous as a fundamental element in his working definition: on an individual basis, an indigenous person is one who belongs to these indigenous peoples through self-identification as indigenous (group consciousness) and is recognized and accepted by the group as one of its members (acceptance by the group). This is also a fundamental criterion in the statement of coverage in ILO Convention No. 169, where it is said that self-identification as indigenous shall be regarded as a fundamental criterion for determining the groups to which the provisions of the Convention apply. This preserves for these communities the sovereign right and power to decide who is a member of their communities, both subjectively and objectively, without external interference.

11. In its Operational Directive 4.20, the World Bank states the view that no single definition can capture the diversity of indigenous peoples. However, the World Bank identifies certain characteristics which often apply to indigenous peoples:

> "(a) a close attachment to ancestral territories and to the natural resources in these areas;
>
> "(b) self-identification and identification by others as members of a distinct cultural group;
>
> "(c) an indigenous language, often different from the national language;
>
> "(d) presence of customary social and political institutions; and
>
> "(e) primarily subsistence-oriented production."

12. The Chairperson-Rapporteur of the United Nations Working Group on Indigenous Populations, Ms. Erica-Irene A. Daes, prepared a comprehensive working paper on the concept of "indigenous people" prior to the fourteenth session of the Working Group (E/CN.4/Sub.2/AC.4/1996/2 and Add.1). The Chairperson-Rapporteur of the Working Group stated her agreement with the World Bank that no single definition could capture the diversity of indigenous peoples worldwide.

13. The draft United Nations declaration on the rights of indigenous peoples, as agreed upon by the members of the Working Group on Indigenous Populations and adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, does not contain a definition of "indigenous peoples". During the sessions of the Working Group, representatives of indigenous peoples and many Governments expressed the view that a definition of the concept of "indigenous peoples" is not necessary at the international level, although such definitions may be necessary and advisable at the national level. In addition, indigenous peoples have challenged the need for a universal definition of the concept of "indigenous peoples", considering the fact that "peoples" in general are not defined in international law. In addition, there is also a concern that a definition aiming to be universally applicable may serve to exclude certain indigenous peoples and be used for this purpose.

14. The Saami Council is of the opinion that the future debate on the definition of indigenous peoples should take place in the permanent forum itself, if at all, and that a definition of "indigenous peoples" can therefore not be a prerequisite to the establishment of the forum.

C. United Nations body to which the permanent forum should report

15. The Saami Council is of the opinion that the permanent forum should be established as a subsidiary body of the Economic and Social Council (ECOSOC), and with a mandate that embraces the full range of issues under ECOSOC's mandate.

16. Article 68 of the Charter of the United Nations provides the necessary legislative foundation for such an establishment: that ECOSOC shall set up commissions in economic and social fields and for the promotion of human rights, and any other commissions as may be required for the performance of its functions. The Charter does not specify the composition or functions of any of the commissions envisaged in Article 68. However, the Saami Council's understanding of the intention of the Charter is that a special commission on indigenous issues is required to enable ECOSOC to perform functions relating to indigenous peoples and to thereby fulfil its obligations under the Charter of the United Nations.

17. ECOSOC has four types of subsidiary bodies: (a) functional commissions; (b) standing committees; (c) regional commissions; (d) expert bodies. Those bodies are either intergovernmental or expert bodies. Only functional commissions will be further discussed in this paper.

18. ECOSOC has nine functional commissions, the most well known for indigenous peoples being the Commission on Human Rights and Commission on Sustainable Development, as well as others such as the Commission for Social Development and the Commission on the Status of Women. The different functional commissions are inter-governmental bodies. This means that only Governments are members and have the right to vote in those bodies. United Nations agencies and non-governmental organizations in consultative status can participate as observers, without having the right to vote.

19. A possible solution could be to establish a general functional commission on indigenous issues. However, this would only be acceptable to indigenous peoples if they are given the same status as Governments. This means that both Governments and indigenous peoples should be members of the commission with the right to vote. The specialized agencies and indigenous and non-indigenous non-governmental organizations should be given the right to participate as observers. Individual experts, indigenous and non-indigenous persons with special competence, should also have the right to participate in any future subsidiary thematic bodies of the permanent forum.

D. Mandate and terms of reference

20. The overall goal of the permanent forum should be to promote peace and prosperity in accordance with the Charter of the United Nations, by developing friendly relations among nations and peoples based on respect for the

principle of equal rights. The overall activities of the forum should focus on prevention of conflicts and promotion of understanding among peoples, peace and prosperity in accordance with the Charter of the United Nations.

21. It should be a forum for dialogue between Governments, indigenous peoples and United Nations bodies on issues affecting indigenous peoples. Thus, it should be a political forum where Governments and indigenous peoples meet as equal partners to discuss all issues affecting indigenous peoples. It is crucial that the forum be given a mandate which makes it strong and effective, and therefore it should be capable of taking decisions and action to protect the rights of indigenous peoples in addition to providing a permanent mechanism within the United Nations for effective monitoring of the situation of the indigenous peoples. In other words, the permanent forum should stimulate the ongoing dialogue between indigenous peoples and Governments, as well as be an effective mechanism for securing indigenous rights.

22. The mandate of the permanent forum should enable it to deal effectively with the full range of issues covered by ECOSOC's mandate which are of concern to indigenous peoples. The forum should also have the potential to facilitate other United Nations bodies and specialized agencies in devising coherent and coordinated policies and programmes for the benefit of indigenous peoples which incorporate the indigenous view in their conceptualization and implementation.

23. The permanent forum should submit proposals, recommendations and reports to ECOSOC regarding indigenous issues. It should be authorized to call in ad hoc working groups in specialized fields or individual experts, with the approval of the President of the Council and the Secretary-General, if and when required.

24. The indigenous peoples' statement of mission of a permanent forum, made at the Copenhagen workshop, identifies a wide range of possible operational activities for the permanent forum. It was stated that the permanent forum should: (a) be able to make clear decisions and intervene effectively on an urgent basis on behalf of indigenous peoples throughout the world; (b) be involved in and coordinate action for the resolution of conflicts affecting indigenous peoples in any way; (c) oversee the implementation and monitor the effectiveness of international and regional instruments and programmes affecting indigenous peoples; (d) monitor and advise on the implementation and effectiveness of actions of United Nations bodies and Member States in relation to indigenous peoples; (e) provide indigenous peoples with a high-level and public forum so that they can participate in decisions and consider a wide range of matters affecting them in the areas of development, the environment, culture, education, economics, social issues, intellectual property and trade, with particular emphasis on traditional and innovative systems; (f) eliminate racism and discrimination against indigenous peoples; (g) promote and advance world acceptance and understanding of all peoples.

E. Membership

25. The Saami Council is of the opinion that indigenous peoples and Governments should be the members of the permanent forum. This means that Governments and indigenous peoples should have equal positions in the permanent forum, for example indigenous peoples should also have the right to vote in this new body. If the permanent forum is established as an inter-governmental body of Member States only, it would lack the necessary legitimacy and credibility.

26. The core group (group of members) of the permanent forum should be composed of an equal number of representatives of Governments and indigenous peoples based on the principle of geographical balance. The forum should have between 10 and 25 members, elected for a period of three to four years. Indigenous peoples, represented by their traditional or contemporary political entities, should be eligible for membership in the permanent forum.

27. However, indigenous peoples and Member States which are not members of the permanent forum should be invited to participate, without vote, in the deliberations of any matters of particular concern to them. The permanent forum should also make arrangements for representatives of the specialized agencies to participate, without vote. Moreover, non-governmental organizations, indigenous as well as non-indigenous, should also be invited to participate as observers without the right to vote. Independent experts, indigenous as well as non-indigenous, could serve the permanent forum as its special rapporteurs when required or as members of its subsidiary bodies dealing with thematic or technical issues.

F. Indigenous participation

28. There should be two categories of participation: (a) participation as member, and (b) participation as observer. Indigenous peoples, represented by their traditional or contemporary political entities, should either participate as members with the right to vote or as observers when they are not serving as members. Indigenous non-governmental organizations should have the right to participate as observers only. Individual indigenous experts often possess in-depth knowledge about complex indigenous issues, and they should therefore be invited to contribute to the work of the forum in appropriate ways, e.g., as special rapporteurs or members of expert groups.

29. It is extremely important to establish a clear distinction between the participation of "indigenous peoples and nations" and "indigenous non-governmental organizations". Such distinction should be reflected in the structure of the permanent forum. For example, in our case (meaning the Saami participation), our publicly elected Saami Parliaments in Finland, Norway and Sweden should be eligible for membership in the permanent forum, while the Saami Council as an organization should be an observer only.

G. Relationship with the Working Group on Indigenous Populations

30. The Working Group on Indigenous Populations is open to indigenous participation regardless of consultative status with ECOSOC. In this way the Working Group is unlike all other United Nations bodies, in which normally

only NGOs in consultative status are allowed to participate. The possibility of indigenous participation regardless of ECOSOC status is very important, specially since at present only 15 indigenous organizations have the necessary consultative status.

31. Despite being at the lowest possible level within the United Nations system and reporting to the Sub-Commission only, the Working Group on Indigenous Populations has over the years considered a number of important issues. These include standard-setting activities, review of developments, special studies on indigenous issues, and a number of other issues.

32. The work of the Working Group is important for the promotion and protection of indigenous rights, and it should therefore continue to do its work. Until the permanent forum is established, the Working Group should continue as it has done since its establishment in 1982. Depending on the establishment of the permanent forum and its mandate, the terms of reference of the Working Group may need to be reviewed in the future. However, it should be clear that the permanent forum should not replace the Working Group on Indigenous Populations; it should be an additional entity established at a higher level within the United Nations system.

IV. DECLARATION OF THE FIRST INTERNATIONAL INDIGENOUS CONFERENCE ON A PERMANENT FORUM IN THE UNITED NATIONS SYSTEM, TEMUCO, CHILE, 6-9 MAY 1997

We, the indigenous peoples meeting in Temuco, reaffirm the principles and objectives of Article 1.2 of the Charter of the United Nations: to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace,

Bearing in mind the recommendations pertaining to indigenous people included in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (A/CONF.157/23), concerning the establishment of a permanent forum for indigenous people in the United Nations system,

Recalling also the recommendations of the United Nations Conference on Environment and Development as stated in article 22 of the Rio Declaration on Environment and Development and chapters 11 and 26 of Agenda 21 concerning indigenous people,

Further recalling General Assembly resolution 50/157 in which the establishment of a permanent forum for indigenous people in the United Nations system is pinpointed as one of the major objectives of the International Decade of the World's Indigenous People along with the adoption of a United Nations declaration on the rights of indigenous peoples,

Welcoming the Secretary-General's review of the existing mechanisms, procedures and programmes within the United Nations concerning indigenous peoples (A/51/493),

Considering the Secretary-General's conclusions in which he states that there are no mechanisms in the United Nations organizations which give the indigenous peoples an opportunity to take part in decision-making, nor any regular exchange of information among Governments, indigenous peoples and the United Nations system,

We, the indigenous peoples, declare that:

1. In accordance with the principle of dialogue between Governments and peoples we call for the rapid establishment of the permanent forum at the highest possible level;

2. The indigenous peoples have the right to full and effective participation in the permanent forum on an equal footing with Governments. It is also important that United Nations agencies, non-governmental organizations and independent experts should have the opportunity to take part in the discussions of the permanent forum when the parties so require;

3. The mandate of the permanent forum should be sufficiently broad and cover all areas which concern the indigenous peoples of the world, including cultural, civil, political, social and economic rights, health, women, children, development, education, the environment, territories, human rights, the resolution of conflicts and the coordination of activities with the United Nations agencies in which the indigenous peoples are involved.

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